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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 3

[Docket No. DHS-2009-0009]

RIN 1601-AA56

Petitions for Rulemaking, Amendment, or Repeal

AGENCY: Office of the Secretary, DHS.

ACTION: Interim final rule.

SUMMARY: Pursuant to the Administrative Procedure Act, the Department of Homeland Security (DHS or Department) is adopting a process under which interested persons may petition the Department to issue, amend, or repeal a rule.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number DHS-2009-0009, by *one* of the following methods:

- (1) **Federal eRulemaking Portal**: <http://www.regulations.gov>.
- (2) **Fax**: 202-343-4011.
- (3) **Mail**: Danny Fischler, OGC, Mail Stop 0485, 245 Murray Lane, S.W.,
Department of Homeland Security, Washington, DC 20528-0485.

Instructions: In your submission, please include the agency name and docket number for this rulemaking. We will post all comments, without any change and including any personal information contained in the comment, to the public docket. All comments may be read at <http://www.regulations.gov>. We strongly encourage commenters to submit comments through the Federal eRulemaking Portal, as it is the best way to ensure that we timely receive your comment.

Docket: For access to the docket or to read background documents or comments, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Danny Fischler, Office of the General Counsel, U.S. Department of Homeland Security, 202-282-9822.

SUPPLEMENTARY INFORMATION:

I. Background

The Administrative Procedure Act (APA) requires that each agency give interested persons the right to petition the agency for the issuance, amendment, or repeal of a rule. 5 U.S.C. 553(e). Such a petition is known as a “rulemaking petition.” DHS is adopting this rule to describe its procedures for receiving and responding to rulemaking petitions. Other federal agencies have adopted similar petition procedures. See, e.g., 49 CFR 5.11, 5.13 (Department of Transportation); 24 CFR 10.20 (Department of Housing and Urban Development).

Two components of DHS have component-specific regulations governing rulemaking petitions. See 33 CFR 1.05-20 (U.S. Coast Guard); 44 CFR 1.17, 1.18 (Federal Emergency Management Agency (FEMA)). This rule leaves those regulations

in place. This rule, however, will cover petitions related to all other components of the Department.

II. Discussion of the Rule

The discussion below provides a section-by-section description of the rule's provisions.

§ 3.1 Definitions

This section includes definitions that apply throughout the rule.

§ 3.3 Applicability

This section describes the applicability of this rule. Interested persons who wish to submit a rulemaking petition to DHS¹ must use the process outlined in this rule, except as follows:

(1) Interested persons who wish to submit a rulemaking petition on a matter related to the U.S. Coast Guard must submit their request to the U.S. Coast Guard pursuant to 33 CFR 1.05-20.

(2) Interested persons who wish to submit a rulemaking petition on a matter related to FEMA must submit their request to FEMA pursuant to 44 CFR 1.18.

In summary, the procedures described in this rule cover rulemaking petitions related to the rulemaking functions of all Department components, except for the U.S. Coast Guard and FEMA. Accordingly, the procedures described in this rule are the exclusive procedures for submitting a rulemaking petition related to the programs and authorities of U.S. Citizenship and Immigration Services, U.S. Customs and Border Protection (except for customs-revenue functions retained by the Department of the Treasury under sections 412 and 415 of the Homeland Security Act and Treasury

¹ Except as provided below, reference to DHS in this rule also includes reference to DHS components.

Department Order No. 100-16²), U.S. Immigration and Customs Enforcement, the National Protection and Programs Directorate, and the Transportation Security Administration (TSA) among other Department components.

§ 3.5 Format and Mailing Instructions.

This section provides instructions for how to submit a rulemaking petition to the Department. The petitioner must clearly mark the rulemaking petition itself as a rulemaking petition. In addition, the petitioner must provide essential contact information—including a name and mailing address—so that the Department is able to reply to the petitioner. A petitioner may also submit additional information, such as telephone numbers, a fax number, and/or an email address.

The Department will accept petitions by mail (no courier service accepted) to the address(es) designated in the regulation. The Department will accept most petitions for rulemaking at a single address, however, petitioners may also submit petitions related to TSA-specific authorities directly to TSA, at the address in the regulation.

Section 3.5 contains the minimum procedural requirements for formatting and submitting a rulemaking petition under this regulation. In the interest of efficiency and sound public administration, DHS may decline to accept as a rulemaking petition any correspondence that does not meet these basic requirements.

² In November 2002, Congress passed the Homeland Security Act, and DHS formally came into being as a stand-alone, Cabinet-level department. The Homeland Security Act transferred the Customs Service to DHS, but did not transfer authority related to customs-revenue functions to DHS. Section 412 of the Homeland Security Act provided that the Treasury Department retained customs-revenue function authority, but that the Treasury Department could delegate this authority to DHS. By Treasury Department Order 100-16, Treasury delegated to the Secretary of Homeland Security the authority related to the customs revenue functions subject to certain exceptions. One of the exceptions provides that the Secretary of the Treasury retains the sole authority to approve regulations concerning certain specified customs-revenue subject matters. For further discussion of custom-revenue function authority, see the Appendix to 19 CFR part 0.

§ 3.7 Content of a Rulemaking Petition

This section discusses the substantive content of a rulemaking petition. DHS encourages petitioners to submit rulemaking petitions that clearly explain what the petitioner is requesting, identify specific regulations, and include actionable data. DHS is better positioned to understand and respond to a rulemaking petition if it describes with reasonable particularity the rule that the petitioner is asking DHS to issue, amend, or repeal, as well as the factual and legal basis for the petition. The regulatory text highlights some items that would help DHS to understand and respond to a petition. DHS may deny the petition if it does not adequately describe what the petition is requesting and provide adequate support for the request.

§ 3.9 Responding to a Rulemaking Petition

The regulation describes DHS's process for responding to rulemaking petitions. This section states that DHS, in its discretion, may solicit public comment on a rulemaking petition. Following appropriate consideration of a rulemaking petition, DHS responds to the petition by letter or by Federal Register publication. The responsible official may grant or deny the petition, in whole or in part. Granting the petition means that DHS is initiating regulatory action.

By contrast to the final disposition outcomes described immediately above, DHS may also deny or summarily dismiss without prejudice any petition that is moot, premature, repetitive, frivolous, or which plainly does not warrant further consideration.

III. Regulatory Analyses

A. Administrative Procedure Act

This is a rule of agency organization, procedure, or practice under the Administrative Procedure Act, 5 U.S.C. 553(b)(A). Although the Administrative Procedure Act does not require DHS to provide a period of advance notice and opportunity for public comment, DHS invites public comment on this rule.

B. Executive Order 12866 Assessment (Regulatory Planning and Review)

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule is not a significant regulatory action for the purposes of Executive Order 12866, as amended, and therefore review by the Office of Management and Budget is not necessary.

This rule describes how to petition DHS to issue, amend, or repeal a rule. The rule's qualitative benefits include additional transparency and accountability for the public. The rule imposes no additional costs on the public or the government.

C. Regulatory Flexibility Act

This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.

D. Paperwork Reduction Act

This rule does not contain or modify any collections of information under the Paperwork Reduction Act. See 44 U.S.C. 3501 et seq.

List of Subjects in 6 CFR Part 3

Administrative practice and procedure.

For the reasons set forth in the preamble, DHS amends 6 CFR chapter I by adding part 3 to read as follows:

PART 3--PETITIONS FOR RULEMAKING

Sec.

- 3.1 Definitions.
- 3.3 Applicability.
- 3.5 Format and mailing instructions.
- 3.7 Content of a rulemaking petition.
- 3.9 Responding to a rulemaking petition.

Authority: 5 U.S.C. 301, 553(e); 6 U.S.C. 112.

§3.1 Definitions.

As used in this part:

Component means each separate organizational entity within the U.S. Department of Homeland Security (DHS) that reports directly to the Office of the Secretary.

DHS means the U.S. Department of Homeland Security, including its components.

Rulemaking petition means a petition to issue, amend, or repeal a rule, as described at 5 U.S.C. 553(e).

§3.3 Applicability.

- (a) General requirement. Except as provided in paragraph (b) of this section, this part prescribes the exclusive process for interested persons to submit a rulemaking petition on a matter within DHS's jurisdiction.

(b) Exceptions--(1) U.S. Coast Guard. This part does not apply to any petition for rulemaking directed to the U.S. Coast Guard. Such petitions are governed by 33 CFR 1.05-20.

(2) Federal Emergency Management Agency. This part does not apply to any petition for rulemaking directed to the Federal Emergency Management Agency. Such petitions are governed by 44 CFR 1.18.

§3.5 Format and mailing instructions.

(a) Format. A rulemaking petition must include in a prominent location—

- (1) The words “Petition for Rulemaking” or “Rulemaking Petition;” and
- (2) The petitioner’s name and a mailing address, in addition to any other contact information (such as telephone number or email) that the petitioner chooses to include.

(b) Mailing instructions--(1) General mailing address. Any interested person may submit a rulemaking petition by sending it to the following address:

U.S. Department of Homeland Security
Office of the General Counsel, Mail Stop 0485
Attn: Regulatory Affairs Law Division
245 Murray Lane, S.W.
Washington, D.C. 20528-0485

(2) Transportation Security Administration mailing address. Any interested person may submit a rulemaking petition regarding a Transportation Security Administration program or authority directly to the Transportation Security Administration by sending it to the following address:

Transportation Security Administration
Office of the Chief Counsel, TSA-2
Attn: Regulations and Security Standards Division
601 South 12th Street

Arlington, VA 20598-6002

- (3) DHS does not accept rulemaking petitions delivered by courier.

§3.7 Content of a rulemaking petition.

(a) DHS will be better positioned to understand and respond to a rulemaking petition if the petition describes with reasonable particularity the rule that the petitioner is asking DHS to issue, amend, or repeal, and the factual and legal basis for the petition. For instance, DHS would be better able to understand and respond to a petition that includes—

- (1) A description of the specific problem that the requested rulemaking would address;
- (2) An explanation of how the requested rulemaking would resolve this problem;
- (3) Data and other information that would be relevant to DHS's consideration of the petition;
- (4) A description of the substance of the requested rulemaking; and
- (5) Citation to the pertinent existing regulations provisions (if any) and pertinent DHS legal authority for taking action.

(b) [Reserved]

§3.9 Responding to a rulemaking petition.

- (a) Public procedure. DHS may, in its discretion, seek broader public comment on a rulemaking petition prior to its disposition under this section.
- (b) Disposition. DHS may respond to the petition by letter or by Federal Register publication. DHS may grant or deny the petition, in whole or in part.

(c) Grounds for denial. DHS may deny the petition for any reason consistent with law, including, but not limited to, the following reasons: the petition has no merit, the petition is contrary to pertinent statutory authority, the petition is not supported by the relevant information or data, or the petition cannot be addressed because of other priorities or resource constraints.

(d) Summary disposition. DHS may, by written letter, deny or summarily dismiss without prejudice any petition that is moot, premature, repetitive, or frivolous, or that plainly does not warrant further consideration.

Jeh Charles Johnson,
Secretary.

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